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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

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OCT 16 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Policies and Rules Concerning)
Children's Television Programming)

Revision of Programming Policies)
for Television Broadcast Stations)

MM Docket No. 93-48

DOCKET FILE COPY ORIGINAL

To: The Commission

COMMENTS OF
CHILDREN'S TELEVISION WORKSHOP

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October 16, 1995

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SUMMARY

At this critical juncture for the future of children's television, Children's Television Workshop urges the FCC to do what Congress intended and the American people continue to expect: enforce vigorously the letter and spirit of the Children's Television Act so that every broadcaster will provide meaningful amounts of educational and informational children's programming. In light of several decades' evidence that voluntary implementation of broadcasters' longstanding obligation to use television to serve children's educational needs simply has not resulted in any significant increase in children's educational television programming, the Commission should adopt, with CTW's suggested modifications, its proposed clear definition of "core" programming, as well as a processing guideline or programming standard of at least three hours per week of such programming.

Current research, including studies appended to these comments, continues to confirm television's ability to engage and educate children, as Congress found when it enacted the Act in 1990. Recent research also confirms Congress' further finding that children will watch educational programming. Quality programming specifically designed to meet children's educational

and informational needs ("core" programming) can and does attract significant audiences on both commercial and noncommercial television stations.

Nevertheless, commercial broadcasters, displaying a persistent bias against educational children's programming, either fail to air meaningful amounts of such programming, or tend to schedule it at hours when few children are watching television. Indeed, decades of experience demonstrate that, left to their own intentions, commercial broadcasters fail to serve adequately the educational needs of children. Even after Congress' passage of the Act in response to the Fowler Commission's reluctance to enhance children's television, the expected increase in children's "core" programming has not materialized, because the Commission's vague children's programming requirements and lax enforcement regime have allowed broadcasters' bias against educational programming to thrive unchecked. Hence, the current Commission's proposals to create clear, enforceable standards are a welcome relief, and should be adopted.

The FCC first proposes several initiatives to improve the flow of educational programming information to the public, in order to help improve the ability of the programming marketplace to function. Those proposals that are designed to aid parents to

take responsibility for their children's viewing should be adopted, but on-air educational icons or other devices to disseminate programming information to children should be avoided. Such devices may suggest "eat-your-spinach" television to a child, and may "turn him off" before he has given a program an opportunity to engage his attention.

The Commission also proposes a new six-part definition of "core" educational and informational programming. With minor modifications, the proposal should be adopted: it will provide certainty as to whether a given program qualifies as "core" programming, yet avoid the need for subjective content-based judgments by the FCC. But in lieu of the "is education a significant purpose" test for determining whether a program is specifically designed to meet children's needs, a more objective determinant of educational purpose is the utilization of educational advisors. If the Commission does not want to require the use of such advisors, it should at least find that such use creates a rebuttable presumption of compliance with the "specifically designed" component of the Commission's proposed definition of "core" programming.

With respect to other attributes of the proposed definition, CTW strongly supports the requirements of written educational objectives (including the age of the target audience)

and specified hours of broadcast, but proposes that those hours be 7 am to 10 pm rather than 6 am to 11 pm. Recent Nielsen numbers indicate that as few as 2.4% of children watch television at 6 am; and since 10 pm is the start of the indecency safe harbor intended to protect children, it seems inappropriate to credit "core" programming aired at that hour or later.

Although the proposed definition will eliminate the uncertainty of what programming qualifies to meet the Act's "core" programming requirement, additional guidance is needed regarding how much qualified programming must be aired. For this purpose, the Commission's monitoring option must be rejected: it will not result in an increase in "core" programming. Relying as it does on voluntary compliance with a quantitatively unspecific programming obligation, this option is not significantly different than the 1980s deregulatory regime that Congress sought to end by passing the Act.

Both of the other proposed options, a safe harbor processing guideline and a mandatory programming standard, will clearly increase the amount of "core" programming that is aired. If legally feasible, a mandatory standard rather than a processing guideline should be adopted, and that standard should be three hours per week, increasing by 1/2 hour per year to seven hours per week.

Finally, CTW strongly opposes the Commission's "program sponsorship" proposal. The Act describes the "core" programming requirement as part of each broadcaster's obligation to serve the public interest; it is this fact that distinguishes that requirement from other regulatory schemes where a "tradeability" concept might appropriately be utilized, such as to permit the sale of pollution credits. If broadcasters have a public interest obligation to serve the needs of children, our "most valuable resource," in Congress' words, then they cannot pay others to fulfill that obligation, any more than they can pay other broadcasters to fulfill their statutory equal opportunities or candidate access requirements.

The program sponsorship proposal also will cause a "ghetto" stigma to attach to host stations, because the wealthiest local stations will become sponsor stations, thereby avoiding carrying more than one hour of "core" programming per week and diminishing the public perception of the importance of such programming.

At a minimum, if the "program sponsorship" proposal is adopted, the "host station" should not be permitted to be a public television station. Congress found insufficient educational programming on commercial stations, not on noncommercial outlets.

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**COMMENTS OF
CHILDREN'S TELEVISION WORKSHOP**

Children's Television Workshop ("CTW") hereby comments on the Notice of Proposed Rule Making in the above-captioned proceeding, 10 FCC Rcd 6308 (1995) ("Notice"), proposing changes in the Commission's rules and policies implementing the Children's Television Act of 1990 ("the Act").

I. INTRODUCTION

In the next few months, the Commission will make a critical decision affecting the future of America's children: whether to use the authority entrusted to it by the Act to fulfill Congress' intent to realize television's potential to educate, or instead to rely once again on broadcasters' claims of

good intentions to comply voluntarily with the Act. Children's Television Workshop urges the FCC to do what Congress intended and parents across America desperately want for their children: effectively enforce the Act so that every broadcaster will provide meaningful amounts of educational and informational programming for children, to counter the flood of meaningless, lowest common denominator entertainment programming now dominating children's viewing opportunities.

To instead leave in place the present imprecise, laissez-faire regulatory regime will have the historically foreseeable effect of reducing even the present desultory compliance of broadcasters with the Act. Indeed, commercial broadcasters' own nearly universal and widely stated belief in the economic non-viability of educational programming has the practical effect of requiring them to minimize educational children's programming if they are to serve the economic goals of their stockholders. Their belief is in error, but is as unlikely to change as their well-documented pattern of not providing educational programming for children in the absence of enforcement of the Act.

A. Despite Continuing Evidence That Quality Educational Television Programming Reaches And Teaches Children, FCC Enforcement Is Required To Precipitate Meaningful Increases In The Amount Of Such Programming Aired By Commercial Broadcasters.

Current research continues to confirm television's ability to engage and educate children, as Congress found when it enacted the Children's Television Act.^{1/} **Attachment 1** hereto is a May, 1995 report on a four-year study of the effects of educational and non-educational television viewing by lower income preschoolers, conducted by John C. Wright and Aletha C. Huston of the Center for Research on the Influences of Television on Children. The study demonstrates both the positive causal role of young disadvantaged children's viewing of *Sesame Street* and other educational children's programs in their development of readiness for school, and the negative effects on school readiness of viewing non-educational cartoons and adult

^{1/} Children's Television Act of 1989, Senate Committee on Commerce, Science and Transportation, S. Rep. No. 227, 101st Cong., 1st Sess. 5-7 (1989) ("Senate Report") (citing studies and expert testimony demonstrating both television's general ability to teach children effectively, and the effectiveness of particular programs designed to teach specific skills, including *Mister Rogers*, *Sesame Street*, *The Electric Company*, 3-2-1 CONTACT, *Square One TV*, and *Reading Rainbow*).

programming.^{2/} Similarly, a June 23, 1994 report prepared by Westat, Inc. (**Attachment 2**) found significant differences in emerging literacy between preschool viewers and non-viewers of *Sesame Street*.^{3/}

As Congress further found and relied upon in crafting the Act, "children will watch educational programming without being forced by their parents and...children in low-income communities will watch educational programming in their home[s]..."^{4/} This remains the case: a major finding of the 1994 Westat report (**Attachment 2**) was that 86% of early

^{2/} Wright and Huston, *Effects of Educational TV Viewing of Lower Income Preschoolers on Academic Skills, School Readiness, and School Adjustment One to Three Years Later*, at 2 (Univ. of Kansas, May, 1995). This independent academic research was supported by funds from The MacArthur Foundation and Children's Television Workshop.

^{3/} Zill, Davies and Daly, *Viewing of Sesame Street By Preschool Children in the United States and Its Relationship to School Readiness*, at ii (Westat, Inc., June 23, 1994) ("Westat Report"). To determine *Sesame Street's* reach and effectiveness among children from different family backgrounds, at CTW's request Westat conducted a special analysis of data from the 1993 National Household Education Survey, a national telephone survey commissioned by the U.S. Department of Education. Together, the Wright/Huston and Westat reports amply rebut the largely anecdotal Billy Tashman op-ed piece *Sorry, Ernie. TV Isn't Teaching* (N.Y. Times, Nov. 12, 1994) cited by the Commission as questioning the learning gain attributable to *Sesame Street*. Notice, 10 FCC Rcd at 6313 n. 14.

^{4/} Senate Report at 7, citing evidence presented to the Senate Commerce Committee.

elementary pupils (including 85% of pupils from low income families) watched *Sesame Street* before starting school.^{5/}

Moreover, a 1995 study comparing children's perceptions of *Cro* (a CTW-produced animated series designed to introduce 6- to 11-year-olds to basic technological principles) and *The Flintstones* refutes the assumptions underlying broadcasters' contrary claims that children will not watch educational programs. The study, *Science on Saturday Morning (Attachment 3)*, found that children do not distinguish between educational and non-educational programs, nor do they necessarily find educational programs to be less appealing.^{6/}

Not only *Sesame Street*, but other quality programming specifically designed to meet children's educational and informational needs ("core" programming) can and does attract significant audiences. For example, *Ghostwriter*, CTW's public television series utilizing a reality-based mystery-adventure format to make reading and writing exciting to 7- to 10-year-olds, recently was among the top five commercial and

^{5/} Westat Report at i.

^{6/} Fisch, Yotive, McCann, Garner and Chen, *Science on Saturday Morning: Children's Perceptions of Science in Educational and Non-educational Cartoons*, at 2, 16 (Children's Television Workshop, Oct., 1995).

noncommercial network and syndicated programs viewed by children 6 to 11, while Cro, in its second season on commercial television, outperformed its Saturday noon time slot competitors among children 6-11 and children 2-11 (**Attachment 4**).

Despite this evidence that quality "core" programming can and does attract significant audiences on public and commercial television stations, commercial broadcasters, based on the "conventional wisdom" that children will not watch even well-made educational programs, either fail to air meaningful amounts of such programming, or tend to schedule it at hours when few children are watching television. CTW fully agrees with the Commission, Notice at 6318-19, that industry studies purporting to show significant amounts of "core" children's programming on commercial television stations are flawed, and that any increases are modest at best.

Indeed, decades of experience demonstrate that, left to their own "good intentions," commercial broadcasters fail to serve adequately the educational needs of children. In 1974, the FCC told broadcasters that "we expect to see a reasonable amount of programming which is particularly designed with an educational

goal in mind."^{7/} In 1979, an FCC Children's Television Task Force found that the Commission's programming guidelines were not being met, and that market forces failed to ensure that television programming was responsive to children's needs.^{8/} As a result, the Task Force "recommended a series of options ranging from simply relying on noncommercial television for children's programming to adopting mandatory requirements"^{9/} -- not unlike the options presently proposed by the Commission.

At the end of the 1980s, a decade in which a deregulatory Commission largely "left children to fend for themselves in the open marketplace of programming,"^{10/} Congress intervened, stating that "[i]t was because of the FCC's reluctance to act to enhance children's television that the Congress believed a legislative remedy was necessary."^{11/} A primary purpose of the resulting Children's Television Act is "to

^{7/} Children's Television Report and Policy Statement, 50 F.C.C. 2d 1, 7 (1974) (footnote omitted).

^{8/} Senate Report at 3, citing Children's Television Task Force Report, Docket 19142, Vol. I at 29-35, 41-44, 76, Vol. IV (1979).

^{9/} Id.

^{10/} Id. at 4.

^{11/} Id. at 5.

increase the amount of educational and informational broadcast television programming available to children" because "there is disturbingly little [such] programming on commercial television."^{12/}

Today, there is minimal change in this regard despite passage of the Act, both because the Commission's children's programming requirements remain vague and have not been effectively enforced, and because commercial broadcasters do not believe that educational children's programming can serve the economic interests of their owners.

^{12/} Id. at 1, 7. Just as support for the V-chip is bipartisan today because members of Congress widely view parents as entitled to special safeguards for their children, so, too, support for enacting the Children's Television Act was bipartisan. Senator Larry Pressler said in 1989, "Children's programming....is regularly watched by individuals in the formative states of their lives....We have an obligation to that particular viewing audience to provide them with quality educational programming." *Children's TV Act of 1989: Hearing on S. 707 and S. 1215 Before the Subcomm. on Communications of the Senate Comm. on Commerce*, 101st Cong., 1st Sess. 4 (1989) (Opening Statement of Sen. Pressler). Congressman Ed Markey said the following year, "I rise in strong support of...the Children's Television Act of 1990. This consensus legislation....provides a congressional recognition, for the first time, that broadcasters' public interest responsibilities include a responsibility to provide educational and informational programming for children." 136 Cong. Rec. H8537 (daily ed. Oct. 1, 1990) (statement of Rep. Markey).

To our knowledge, not a single licensee has been sanctioned for failing to broadcast programming specifically designed to meet children's educational needs, despite the fact that the Commission once again in 1993 found "little change in available programming that addresses the needs of the child audience."^{13/} Moreover, at the FCC's June 28, 1994 en banc hearing, responsible testimony was repeatedly offered demonstrating that without a strong impetus from Washington, broadcasters will not meaningfully serve either the cognitive or affective educational needs of children, and that the unregulated marketplace fails to produce significant amounts of educational children's programming.^{14/}

Now, therefore, the FCC faces a critical choice: to take forceful action that will end years of controversy and uncertainty for regulators, broadcasters and the American public

^{13/} Policies and Rules Concerning Children's Television Programming, Notice of Inquiry, 8 FCC Rcd 1841, 1842 (1993) (footnote omitted).

^{14/} See Testimony of Squire D. Rushnell at 1-4; Testimony of Dr. Dale Kunkel, on behalf of the American Psychological Association, at 1-3; Testimony of Peggy Charren at 6-7; Testimony of the Center for Media Education ("CME") at 3; P. Aufderheide and K. Montgomery, "The Impact of the Children's Television Act on the Broadcast Market" (attachment to CME Testimony), at 7-9, 23-24.

alike, or to once again vainly hope for a change of heart on the part of commercial broadcasters -- one their own beliefs will not permit. The adoption and enforcement of objective definitional and quantitative standards will provide clearly delineated performance requirements with which licensees can readily comply, thereby finally permitting the Children's Television Act to fulfill its promise to require broadcast television to serve the educational needs of children.

B. The FCC Should Reject The "Program Sponsorship" Concept.

As set forth more fully below, CTW strongly objects to the Commission's proposal to permit licensees to fulfill all but one hour per week of any "safe harbor processing guideline" or quantitative "programming standard" that may be adopted by paying for the broadcast of "core" children's programming by another local station or stations. If "children are this nation's most valuable resource," as Congress stated when passing the Act,^{15/} then a Commission policy permitting wealthy stations to "buy out"

^{15/} Senate Report at 5.

of a significant portion of their obligation to serve that resource denigrates Congress' purpose in enacting the Act.

In concept, the program sponsorship idea has been likened to the regulatorily sanctioned market for "air pollution" rights -- which seems on its face to be an apposite analogy. However, in practice it is more likely to work in the manner of Civil War mandatory service legislation, when wealthy Americans used the law to induce the poor to fulfill their own service obligations. Similarly, the sponsorship plan will perpetuate children's television "ghettos," perhaps primarily on public television stations because such stations are under increasing financial pressure. Since Congress enacted the Children's Television Act because market forces had failed to create enough educational programming on commercial television,^{16/} it seems particularly unfortunate to adopt a scheme that is likely to increase, rather than decrease, the very disparity between commercial and noncommercial broadcasters' service to children that the Act was intended to dispel.

^{16/} Senate Report at 7.

II. **EXCEPT FOR ON-AIR EDUCATIONAL IDENTIFIERS,
THE FCC SHOULD ADOPT ITS PROPOSALS TO IMPROVE
THE FLOW OF EDUCATIONAL PROGRAMMING INFORMATION
TO THE PUBLIC.**

In the Notice, the FCC states that in modifying its implementation of the Act, it intends to keep government out of content judgments; improve the ability of the programming marketplace to function, by keeping families informed of where and when they can find educational programming and thereby influence ratings; and facilitate enforcement of the Act by making it easier to monitor the performance of local stations. Notice, 10 FCC Rcd at 6320-22. These are important objectives, and CTW fully approves them, as well as most of the Commission's proposals to implement these goals.

For example, CTW supports the FCC's proposal to require broadcasters to notify publishers of printed program guides of their stations' broadcast schedules for "core" children's programming, so that such notices will be included in localized program guides. Similarly, CTW agrees with the Commission's proposals to make stations' public inspection files more useful vehicles for disseminating "core" programming information to the public. A station's file should: (i) provide the name of the

station's current contact person for children's programming information; (ii) state how each "core" program qualifies as such under the new six-part definition of educational and informational programming described below, including by specifying its educational goals; (iii) maintain children's programming lists physically separate from issue-responsive programming lists and children's commercial limits compliance reports; and (iv) contain quarterly, rather than annual, children's programming reports. In addition, broadcasters should be required to publicize over the air the availability of their children's programming lists for public inspection.

All of these proposals rely, appropriately, on parents and other care-givers to take responsibility for children's viewing, and will significantly assist such persons to play an active role in seeing that the Act's goals are met. It is adults, not children, who read program guides, visit station files, and monitor the nature, amount and quality of the programming available to the children under their care.

But educational programming information should not be required to be disseminated to children, due to their propensity for negative stereotyping. For example, a required on-air

identifier, such as an icon representing educational fare that is superimposed throughout a program, may taint that program as "eat-your-spinach" television for many children, and should be avoided. As the Commission is aware, and the *Science on Saturday Morning* study confirms, if a program engages a child viewer's interest, its educational content will be absorbed; conversely, if the program does not entertain the child, it will not teach her anything. As a result, if a program's educational content is made so obvious as to suggest that the program is primarily instructional with limited entertainment value, it will not be watched.

In short, an icon will not draw a child otherwise not drawn to a program, but it may well turn that child "off" before he has given the program an opportunity to engage his attention. For this reason, CTW recommends that the Commission avoid requiring any "core" programming identifiers that children are likely to see.

III. WITH MINOR MODIFICATIONS, THE COMMISSION'S PROPOSED DEFINITION OF "CORE" PROGRAMMING SHOULD BE ADOPTED.

CTW agrees with the FCC's decision not to adopt its earlier suggestion that qualifying "core" programming be

"primarily" educational and "secondarily" entertainment, a requirement that could have led to the broadcast of a great deal of unwatched programming. Similarly, it was wise to avoid a definition based on advancing learning in specific cognitive areas only, since so much learning is social and emotional.

Instead, the Commission has taken a significant forward step by proposing a definition of "core" programming that provides certainty to broadcasters, yet avoids the need for subjective content-based judgments by the FCC. The six proposed components of the FCC's new definition of "core" programming are clear and objective, and will cause licensees to provide improved service to children. With the few modifications noted in the following discussion of each proposed component, the Commission's suggested new definition should be adopted.

A. Educational Intent.

The requirement that a qualifying program must be specifically designed to meet children's educational and informational needs is long overdue, and is adequately tested by the requirement that education should be "a significant purpose" of the program or series. However, CTW continues to believe that

in lieu of the "significant purpose" test, a more objective determinant of educational purpose, and a more likely predictor of whether a program has educational content, is the utilization of educational advisors.

Testimony at the 1994 en banc hearing demonstrated that most producers and broadcasters who create educational children's programming already use such advisors (educators, child development experts, or specialists in the content area that is the subject of the program) in planning their offerings. Teachers and professors are available to assist local broadcasters in every community in the country. Accordingly, CTW suggests that if the Commission will not require the use of educational advisors for qualifying "core" programming, it should at least find that such use creates a rebuttable presumption of compliance with the "specifically designed" component of the Commission's definition of "core" programming.

**B. Written Educational Goals, Including
Target Audience.**

CTW fully supports a requirement that a qualifying program's educational objectives and its target audience be specified in writing in the children's programming reports that